

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHAEL ANDERSON

VS.

CA

THE UNITED STATES OF AMERICA

VERIFIED COMPLAINT

Parties & Jurisdiction: Allegations applicable to all Counts

1. Plaintiff MICHAEL ANDERSON is a resident of Middletown, Rhode Island.
2. EAST BAY COMMUNITY ACTION PROGRAM (Hereinafter East Bay CAP) is a non profit 501(c)(3) corporation organized and existing pursuant to the laws of the State of Rhode Island with a principal place of business in Newport, Rhode Island, and which at all times pertinent hereto provided through its agents and servants, among other things, health care and dental services to individuals residing in the State of Rhode Island, and more particularly in the East Bay region of the State of Rhode Island.
3. NICOLE YATES, DMD (hereinafter Yates) is upon information and belief, a resident of the State of Georgia. At all relevant times, Defendant Yates was a licensed doctor of medicine in dentistry in the State of Rhode Island, with a principal place of business in Newport, Rhode Island.
4. JOANNE CASTANEDA, DDS, MD (hereinafter Castaneda) is upon information and belief, a resident of the State of Rhode Island. At all relevant times, Castaneda was a licensed

doctor of dental surgery and medical doctor in the State of Rhode Island, with a principal place of business in Middletown, Rhode Island.

5. East Bay CAP is a public health service center pursuant to the Federally Supported Health Centers Assistance Act (FSHCA) and it and its qualified employee, Yates is thereby considered a federal employee subject to the protections and conditions of the Federal Tort claims Act. Claim is therefore brought against the UNITED STATES OF AMERICA for the actions of its servants and employees pursuant to the Federal Tort Claims Act, 28 U.S.C. §2679.

6. ORAL SURGERY & DENTAL IMPLANT CENTER, INC. (Hereinafter Oral Surgery) is a corporation organized and existing pursuant to the laws of the State of Rhode Island with a principal place of business in Middletown, Rhode Island, and which at all times pertinent hereto provided through its agents and servants, among other things, health care and dental services to individuals residing in the State of Rhode Island, and elsewhere.

7. A complaint was timely filed in the State of Rhode Island Superior Court on or about October 16, 2018, and was thereafter removed to this Honorable Court and docketed as file number CA19-152WS.

8. On or about November 19, 2019, the aforementioned complaint was dismissed without prejudice for failure to exhaust administrative remedies, and remanded to the Newport County, Rhode Island Superior Court where it remains pending against Castaneda and Oral Surgery in

the matter of Michael Anderson Vs: Joanne Castaneda, DDS, MD, Alias and Oral Surgery & Dental Implant Center, Inc., Alias, NC2018-0367.

9. On or about November 25, 2019, Plaintiff filed a claim pursuant to the Federal Tort Claims Act, 28 U.S.C. §2679. More than six months has elapsed with no action taken by the federal agency in response to said claim.

COUNT I

Negligence against United States of America

10. Beginning on or about January 26, 2016, and continuing thereafter, Defendant United States of America through its agents and servants, East Bay CAP, and Nicole Yates, DMD undertook for valuable consideration to provide dental health care and treatment to Plaintiff. It then and there became and was the duty of Nicole Yates to exercise the degree of care and skill that was expected of a reasonably competent practitioner in the same class to which she belongs, acting in the same or similar circumstances.

11. Nevertheless, Yates failed to exercise the requisite degree of care and skill in her provision of dental health care and treatment to Plaintiff thereby causing Plaintiff to suffer and become afflicted with severe personal injuries and extreme pain and suffering.

12. On or about January 26, 2016, Yates, while employed at East Bay CAP negligently performed a coronectomy on Plaintiff's tooth #17, thereby damaging and causing injury to the Plaintiff's trigeminal or lingual nerves.

13. From January 26, 2016 through February 22, 2018, and continuing, plaintiff experienced symptoms of numbness and pain. Notwithstanding the same, on each visit Plaintiff was told by Yates and personnel at East Bay CAP that the symptoms were what was to be expected given the Plaintiff's dental hygiene and overall health condition, but that the numbness and pain would subside, and that his condition was improving.

14. As a result, plaintiff, relying on the care and skill of Yates and others at East Bay CAP was not able, in the exercise of reasonable care to discover that Yates negligence as aforesaid was the likely cause of Plaintiff's symptoms.

15. In or about February 22, 2018, after receiving treatment from another health care provider Plaintiff learned that he might have nerve damage, as aforesaid due to the negligence of Yates, East Bay CAP, and the defendants named herein.

16. Plaintiff had no reason to know, nor could he have known through the exercise of reasonable diligence that the injuries which he sustained were likely the result or due to the negligence of the aforesaid Yates, acting while employed as an agent of East Bay CAP and the United States of America.

17. As a direct and proximate result of the negligence of Yates, Plaintiff was severely and permanently injured, has suffered and will in the future suffer great pain of body, nerves and nervous system, was rendered disabled, has suffered and will in the future suffer a loss of wages,

has expended and will in the future become liable to pay large sums of money for medical, hospital and other health care expenses, and Plaintiff was and is otherwise permanently injured.

WHEREFORE, Plaintiff demands judgment against Defendant United States of America for compensatory damages, plus interest and costs.

COUNT II

Vicarious Liability against East Bay Community Action Program

18. The prior paragraphs are incorporated by reference as if fully set forth herein.

19. At all times relevant to his provision of health care and treatment to Plaintiff, Defendant Yates, was an agent, servant, or employee of East Bay CAP , and thereby federal employees pursuant to the Federal Tort Claims Act, and were acting within the scope of that agency or employment.

WHEREFORE, Plaintiff demands judgment against Defendant United States of America for compensatory damages, plus interest and costs.

COUNT III

Joint and Several Liability

20. The prior paragraphs are incorporated by reference as if fully set forth herein.

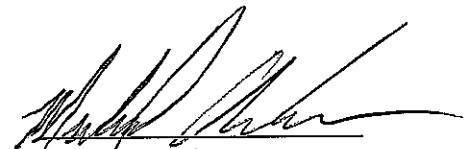
21. The negligence complained of as set forth in the preceding paragraphs was joint and several as to the defendants named herein, and as to the defendants named in the State Superior Court Action, Castaneda and Oral Surgery.

WHEREFORE, Plaintiff demands judgment against Defendants United States of America, Joanne Castaneda, DMD, MD, and Oral Surgery & Dental Implant Center, Inc., jointly and severally for compensatory damages, plus interest and costs.

Plaintiff demands a trial by jury. and designates Mark B. Morse as trial counsel.

VERIFICATION

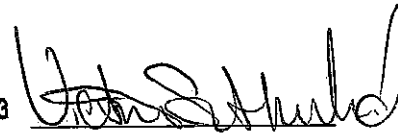
I, Michael Anderson, have read the averments contained herein, have personal knowledge of the same, and swear to the truth of the same, except for that which I have stated to be true upon my information and belief which I affirm to be true to the best of my information and belief.



Michael Anderson

Subscribed and sworn to in the presence of a Notary Public this 8 day of June, 2020.

VICTORIA A SUTHERLAND
Notary Public, State of Rhode Island
My Commission Expires Nov. 12, 2023



Notary Public

Plaintiff
By his Attorneys
Law Office of Mark B. Morse, LLC

/s/ Mark B. Morse

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